

**NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE  
GEORGIA GOVERNMENT TRANSPARENCY AND  
CAMPAIGN FINANCE COMMISSION**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission") proposes to adopt:

**Advisory Opinion No.: 2023-01**

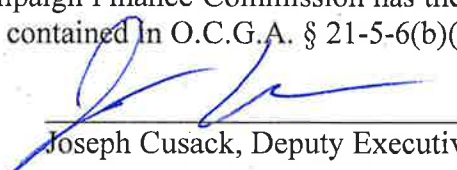
This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice and an exact copy of the advisory opinion may be reviewed during normal business hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the Georgia Government Transparency and Campaign Finance Commission website ([www.ethics.ga.gov](http://www.ethics.ga.gov)) and copies may be requested by contacting the Commission at 404-463-1980.

**A public hearing is scheduled to begin at 10:00 AM on June 26<sup>th</sup>, 2023 in Room 606 at the Coverdell Legislative Office Building, 18 Capitol Square SW, Atlanta, GA 30334** to provide the public an opportunity to comment upon and provide input into the proposed advisory opinion. At the public hearing anyone may present data, make a statement, comment, or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Written comments are welcome. Such written comments must be legible and signed, and should contain contact information from the maker (address, telephone and/or facsimile number, etc.). To ensure their consideration, written comments must be received on or before September 20, 2017. Written Comments should be addressed to Nancy Sandberg, Legal Administrative Assistant, Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 – West Tower, Atlanta, Georgia 30334. Fax: 404-463-1988.

**The proposed advisory opinion will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on June 26<sup>th</sup>, 2023, at the Coverdell Legislative Office Building, Room 606, 18 Capitol Square SW, Atlanta, GA 30334.**

The Georgia Government Transparency and Campaign Finance Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 22 day of May, 2023.

  
\_\_\_\_\_  
Joseph Cusack, Deputy Executive Secretary



## GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

### Advisory Opinion

No. 2023-01

In response to an advisory opinion request on February 21, 2023, from Stacey Evans and Beth Camp (“Requestors”), the Georgia Government Transparency and Campaign Finance Commission (“Commission”) advises that caregiving expenses for a minor child or dependent for which a candidate has direct caregiving responsibility incurred as a direct result of campaign activity or holding public office is an ordinary and necessary campaign expenditure as contemplated by O.C.G.A. § 21-5-33(a).

#### **Questions Presented in Request for Advisory Opinion 2022-01**

1. Are caregiving expenses-defined as direct care, protection, and supervision of a child or other person with a disability or a medical condition for which a candidate has direct caregiving responsibility-incurred as a direct result of a campaign activity and holding public office deemed a permissible campaign expenditure in the state of Georgia?

#### **Factual Background**

Pursuant to a written request for advisory opinion dated February 21, 2023, Representatives Stacey Evans and Beth Camp, seek guidance as to whether caregiving expenses for children and dependents are ordinary and necessary campaign expenses. An ordinary and necessary expense includes but is not limited to,

“[...] expenditures made during the reporting period for qualifying fees, office costs and rent, lodging, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, special events, volunteers, reimbursements to volunteers, repayment of any loans received except as restricted under subsection (i) of Code Section 21-5-41, contributions to nonprofit organizations, flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, attorney fees connected to and in the furtherance of the campaign, and all other expenditures contemplated in Code Section 21-5-33.”

O.C.G.A. § 21-5-3(18).

Contributions may only be expended on ordinary and necessary expenses incurred in connection with the candidate’s campaign or fulfillment of the public office they occupy. *See* O.C.G.A. § 21-5-33(a). Requestors assert the Federal Elections Commission (“FEC”) has previously issued guidance on this issue which allowed campaign contributions to be utilized for childcare in connection with campaign activity and fulfillment of their public office. As the Commission has



## GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

### Advisory Opinion

No. 2023-01

never answered this question, Requestors seek clarity as to whether caregiving expenses are an ordinary and necessary expense.

### Discussion and Legal Analysis

The sole question asked by Requestors is one of first impression for the Commission to answer. Persuasive authority from the FEC reveals this question has been answered four times by Advisory Opinion about childcare. In FEC AO 1995-42(McCrery), AO 2018-06, AO 2019-13, and AO 2022-07, childcare expenses incurred because of campaign activities are permissible. The FEC in their analysis asks the question, “Would these costs for childcare occur irrespective if the candidate was not running for office?”. If the answer is “yes”, then the candidate may not use campaign funds to pay for childcare, but if the answer is “no” and the childcare costs are solely incurred because of campaign activities or in the fulfillment of their public office, then utilizing campaign funds is permissible.

One of the Commission’s prominent functions is to prevent the misuse of campaign funds. *See generally* O.C.G.A. § 21-5-2. Further, public officers and candidates for public office are barred from converting campaign funds into personal assets. *See generally* O.C.G.A. § 21-5-33. In the present analysis, the childcare and dependent costs are being incurred as a *direct result* of campaign activity or holding public office. Because these costs are incurred by candidates in furtherance of their campaign (i.e., they can attend a campaign function because they have childcare) or are in fulfillment of their public office (i.e., they can fulfill their duty as a public official because they have childcare), childcare or dependent care directly incurred because of campaign activity or fulfilling a public office is considered an ordinary and necessary expense.

An analogous examination of an ordinary and necessary expense for a public officer or candidate has been previously considered by the Commission in the form of legislative housing for members of the General Assembly. Many members of the General Assembly who come from far reaches of the state rent apartments or homes while in session and utilize campaign funds to pay for their temporary housing. Legislative housing is considered an ordinary and necessary expense because legislators must be present in Atlanta to fulfill their duties as legislators. The classic “but-for test” rules the day; but-for their duties as legislators, would they incur this housing cost? The answer is no and thus they can utilize campaign funds for legislative housing to fulfill the duties of their elected office.

Candidates and public officials should exercise caution when utilizing campaign funds for childcare or dependent care. Most elected officials serve as public officials part-time. Nothing in this opinion should be construed to allow campaign funds to be utilized for child or dependent care when the cost is incurred by non-campaign or non-public office activities. Because of the part-



## GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

### Advisory Opinion

No. 2023-01

time nature of holding office, the Commission advises it is best practice to keep a log of childcare expenses and corresponding political activities in case of an investigation or audit.

Accordingly, the Commission advises that caregiving expenses for a child or other person with a disability or a medical condition for which a candidate has direct caregiving responsibility incurred as a direct result of campaign activity or holding public is an ordinary and necessary expense under O.C.G.A. § 21-5-3(18).

The Commission advises candidates and public office holders there may be tax implications revolving around child and dependent care but as these matters fall outside the jurisdiction of the Commission, makes no determination how these should be disclosed on tax documents.

### Conclusion


The Georgia Government Transparency and Campaign Finance Commission advises that caregiving expenses may constitute an ordinary and necessary expense as defined by O.C.G.A. § 21-5-3(18), for which a candidate, campaign committee, public officer holding elective office, or member of their staff may expend contributions pursuant to O.C.G.A. § 21-5-33(a).

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Transparency and Campaign Finance Commission, to the specific facts, transaction, or activity set forth for Advisory Opinion 2023-01.

Advisory Opinion 2023-01 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on June 26<sup>th</sup>, 2023.

\_\_\_\_\_  
Chairman

AO 2023-01 prepared by:

  
\_\_\_\_\_  
Joseph M. Cusack  
Deputy Director & General Counsel